

82 - 1882

Office - Supreme Court, U.S.
FILED

IN THE
SUPREME COURT OF THE UNITED STATES

MAY 20 1983

ALEXANDER L. STEVENS,
CLERK

OCTOBER TERM, 1982

NO. 82-_____

CHURCH OF SCIENTOLOGY OF PORTLAND and
CHURCH OF SCIENTOLOGY MISSION OF DAVIS,

Petitioners,

--v.--

PETER S. RUDIE; CHRIS RUDIE; TED PATRICK;
TED PATRICK & ASSOCIATES; RICK HELLER;
REED HELLER; ALMA HALL; BILL HALL; JULIE
CHRISTOPHERSON; PATRICK OSLER; MARY WEEKS;
and LYNN WEEKS,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE
COURT OF APPEALS OF THE STATE OF OREGON

CHARLES J. MERTEN
Counsel for Petitioners
117 S. W. Taylor, Suite C
Portland, Oregon 97204
(503) 227-3157

Of Counsel:

TIMOTHY BOWLES
902 First Farwest Building
400 S. W. Sixth Avenue
Portland, Oregon 97204
(503) 227-4477

May, 1983

QUESTIONS PRESENTED

1. Does the Free Exercise Clause of the First Amendment invalidate, through the Fourteenth, a discovery order made by a state court in a private civil action for damages when the order requires a non-party Church to violate its religious policy and practices by compelling it to produce the confessional files of a parishioner for inspection and copying?
2. When a non-party Church has been found by a state court to be in willful disobedience of a discovery order, made in a private civil action for damages, which order would require it to violate its religious code by compelling it to produce the confessional files of a parishioner, does the Free Exercise Clause of the First Amendment prevent, through the Fourteenth, the court from imposing sanctions of any kind upon the Church?

PARTIES TO PROCEEDINGS BELOW

The parties to the proceedings in the Court of Appeals of Oregon were:

The Church of Scientology of Portland and the Church of Scientology, Mission of Davis,

Appellants,

and

Peter S. Rudie; Chris Rudie; Ted Patrick; Ted Patrick & Associates; Rick Heller; Reed Heller; Alma Hall; Bill Hall; Julie Christofferson; Patrick Osler; Mary Weeks; and Lynn Weeks,

Appellees.

TABLE ON CONTENTS

	PAGE
QUESTIONS PRESENTED.....	i
PARTIES TO PROCEEDINGS BELOW.....	ii
TABLE OF AUTHORITIES.....	v
JUDGMENT BELOW.....	2
JURISDICTION.....	2
CONSTITUTIONAL PROVISIONS INVOLVED.....	3
STATEMENT OF THE CASE.....	4
REASONS FOR GRANTING THE WRIT.....	11
CONCLUSION.....	24
APPENDIX A	
Judgment of the Court of Appeals of the State of Oregon.....	A-1
APPENDIX B	
Order of the Court of Appeals Denying Application For Reconsideration.....	B-1
APPENDIX C	
Order of Oregon Supreme Court Denying Petition For Review.....	D-1

APPENDIX D

Order of Oregon Supreme
Court Denying Petition
For Rehearing.....D-1

APPENDIX E

Relevant Pleadings, Orders,
Memoranda, and Briefs, or
Portions Thereof, From
the Circuit Court of the
State of Oregon For
Multnomah County and the
Oregon Court of Appeals.....E-1

APPENDIX F

Similar Cases Raising Claims
of Religious Fraud, Mind
Control and/or Brainwashing.....F-1

TABLES OF AUTHORITIES

	PAGE
<u>Addington v. Texas</u> , 441 US 418, (1979)	16, 18
<u>Bates v. Little Rock</u> , 61 US 516 (1960)	20
<u>Black Panther Party v. Smith</u> , 661 F2d 1242 (D C Cir 1981), vacated sub. nom. on other grounds, 102 S. St. 3505 (1982)	23
<u>Bostick v. Dittman, et al</u> , Circuit Court of the Sixth Judicial Circuit for Pinellas County, Florida, No. 82-1365-11 (1982)	12
<u>Britt v. Superior Court of San Diego County</u> , 20 Cal3d 844 574 P2d 766 (Cal 1978)	19
<u>Carrington v. Rash</u> , 380 US 89 (1963)	16
<u>Gibson v. Florida Legislative Comm.</u> , 372 US 539, (1963)	13, 20
<u>Heffron v. International Society For Krishna Consciousness, Inc.</u> , 452 US 640 (1981)	17
<u>McDaniel v. Paty</u> , 435 US 618 (1978)	17
<u>Myers v. Juras</u> , 327 F Supp 759, (D Or 1971), aff'd 404 US 803, rev den 404 US 961 (1971)	16

<u>NAACP v. Alabama</u> , 357 US 449 (1958).....	20
<u>Pollard v. Roberts</u> , 283 F Supp 248 (E.O. Ark. 1968).....	21
<u>Prince v. Massachusetts</u> , 321 US 158 (1944).....	18
<u>Reynolds v. United States</u> , 98 US 145 (1878).....	18
<u>Rinaldi v. Yeager</u> , 384 US 305 (1966).....	16
<u>Schneider v. State</u> , 308 US 147, (1939).....	14
<u>Scott v. Rosenberg</u> , 702 F2d 1263 (9th Cir. 1983).....	13, 21, 22
<u>Shapiro v. Thompson</u> , 394 US 618 (1969).....	16
<u>Shelton v. Tucker</u> , 364 US 479 (1960).....	20
<u>Sherbert v. Vernon</u> , 374 US 398 (1963).....	16
<u>Thomas v. Review Board of Indiana Employment Security Division</u> , 450 US 707, (1981).....	14, 17
<u>United States v. Lee</u> , 455 US 252, (1982).....	13, 14, 18
<u>Vogel v. County of Los Angeles</u> , 68 Cal2d 18, 64 Cal.Rpt. 409 434 P2d 961 (Cal. 1967).....	21

<u>West Virginia State Board of Education v. Burnette</u> , 319 US 624 (1943)	17
<u>White v. Davis</u> , 13 Cal3d 757, 120 Cal.Rptr. 94, 533 P2d 222, (Cal. 1975)	20
<u>Wisconsin v. Yoder</u> , 406 US 205 (1972)	14, 16

STATUTES

• 28 USC Section 1257(3)	3
• Federal Rules of Civil Procedure (FRCP) 26(b)(1)	15
Oregon Revised Statutes (ORS) 33.110.....	10
Oregon Rule of Appellate Procedure (ORAP) 10.10.....	3

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1982
NO. 82-_____

CHURCH OF SCIENTOLOGY OF PORTLAND and
CHURCH OF SCIENTOLOGY MISSION OF DAVIS,

Petitioners,

--v.--

PETER S. RUDIE; CHRIS RUDIE; TED PATRICK;
TED PATRICK & ASSOCIATES; RICK HELLER; REED
HELLER; ALMA HALL; BILL HALL; JULIE
CHRISTOPHERSON; PATRICK OSLER; MARY WEEKS;
and LYNN WEEKS,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE
COURT OF APPEALS OF THE STATE OF OREGON

The Church of Scientology of Portland and
Church of Scientology, Mission of Davis
(hereafter, the Church), petition that a writ
of certiorari issue to review the judgment of

the Court of Appeals of the State of Oregon affirming the decision of the Circuit Court of Oregon for the County of Multnomah.

JUDGMENT BELOW

The judgment of the Court of Appeals of
the State of Oregon (App. A-¹) is reported at
59 Or App 409. This judgment affirms the
decision of the trial court without opinion.
There are no other opinions.

JURISDICTION

The judgment of the Court of Appeals of
the State of Oregon was entered on September
15, 1982 (A-2). A petition for review was

1

References to "(A-)" are to pages
in Appendix A to the petition, infra. References to "App. B", "App.
C", and "App. D" are to appendices
B, C, and D, infra. References to
"(E-)" are to pages in Appendix E,
infra. References to "F- " are to
pages in Appendix F, infra.

timely filed with the Supreme Court of the State of Oregon. Under Oregon Rule of Appellate Procedure (ORAP) 10.10, this petition initially constituted a petition for reconsideration by the Oregon Court of Appeals, which denied it on November 23, 1982 (App. B). The petition for review was denied by the Oregon Supreme Court on January 25, 1983 (App. C). Petitioner then timely filed a petition for rehearing with the Supreme Court of the State of Oregon, which was denied on March 1, 1983 (App. D). This petition is being filed within 90 days of the denial by the Oregon Supreme Court of the motion for rehearing of the denial of the petition for review. The jurisdiction of this court is invoked pursuant to 28 U.S.C. Section 1257(3).

CONSTITUTIONAL PROVISIONS INVOLVED

The First Amendment to the Constitution

of the United States provides:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

The Fourteenth Amendment provides, in relevant part:

"****No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

Jessica Marks is a Scientologist and a member of the Church. In 1978 she filed a civil action in the Circuit Court of the State of Oregon for Multnomah County. She charged Ted Patrick, a nationally known "deprogram-

mer," and others with false imprisonment and conspiracy to deprive her of the right to practice her religion resulting from an alleged attempt to forceably dissuade, or "de-program," Ms. Marks from her Scientological beliefs. (E-1 - E-4.) Defendants entered a general denial and asserted an affirmative defense of the statute of limitations. (E-5.)

During the course of discovery in the case, the defendants requested that Ms. Marks produce for their inspection her confessional files, known as "auditing" files, generated in confidential counseling sessions with Church ministers. (E-5 - E-6.) Ms. Marks resisted production but the trial court ordered her to produce them or consent to their release to defense counsel by whomever had possession. (E-6). Ms. Marks complied by executing the required waiver. (E-6).

On October 7, 1981, the defendants served Petitioners with subpoenas duces tecum, requiring them to appear at a deposition and to bring with them "copies of any written documents concerning any auditing, training or counseling received by Jessica Marks from any Church of Scientology organization." (E-6 - E-7.)

On October 16, 1981 Petitioners filed a Motion to Quash Subpoena Duces Tecum on the grounds, inter alia, "that discovery seeks to inquire into privileged matter; that discovery constitutes an invasion of privacy;***" (E-7 - E-8.) In support of their Motion, Petitioners filed a memorandum that stated in relevant part:

"Defendants cannot subpoena privileged matter.

When a non-party moves to quash a subpoena duces tecum, the court must balance the proven need, if any, of

the party seeking inspection against the harm, embarrassment, or burden which would result from production of the documents. [Cites] Here non-specific confidential confessional files are sought which could be embarrassing not only to the plaintiff but to third parties as well. Further, it is the clear policy and practice of the Church not to disclose such files outside of authorized Church officials. ***Defendants make no showing of need for such files, nor of relevance." (emphasis added.) (E-8 - E-11.)

Petitioners' motion was further supported by the affidavit of Christopher R. Linnerooth who stated:

"I am an ordained minister of the Church of Scientology. The Church of Scientology is a recognized bona fide religion with churches throughout the world. The Church is officially classified by federal and state governments, for tax purposes, as a religious organization.

Auditing is a formalized process used in our religion whereby a Church member seeks and obtains spiritual guidance from a spiritual leader -- the auditor. Counseling sessions are held in a structured,

organized way in auditing. The auditors keep notes of what is discussed in those sessions. Those are the auditing files.

[T]he auditing***files typically contain notes of confessions and spiritual problems not only about the Church member in question, but also the third person that the Church member discusses.

It is the policy and practice of the Church to receive such communications in confidence and to keep such communications confidential within the Church." (Emphasis added.) (E-11 - E-12.)

Petitioners' Motion to Quash was also supported by the affidavit of Jessica Marks, who stated in part:

"Throughout all of my auditing, I have confessed various sins to my minister which are recorded in my auditing folders. I also spoke in confidence to my minister about things which are very personal that deal with my parents, the death of my brother, my relationship with my former husband, and my friends. These are very personal and I do not wish that they be paraded before a court. In my church, only ministers may view such files.

It is clear to me that the defendants are trying to put my religion on trial by questioning all the religious doctrine and the practices contained in the Church's books and my confessional***folders. To allow this to happen at all is contrary to the First Amendment of our Constitution which protects religious freedom***" (E-13 - E-15.)

On November 20, 1980 the trial court granted Petitioners' Motion to Quash in part, but did order them to produce "copies of the auditing file of Jessica Marks." (E-16 - E-17.)

On November 24, 1980, Petitioners appealed the order requiring them to produce the auditing files to the Court of Appeals of the State of Oregon. (E-17 - E-18.) That appeal was dismissed upon motion of the defendants. (E-18.)

On December 10, 1980 the trial court ordered Petitioners to show cause why they

should not be held in contempt "for willful disobedience" of its order that they produce Ms. Marks auditing files and, after hearing, found Petitioners in willful contempt for not producing them. (E-19 - E-21.) The court ultimately entered judgment against Petitioners under ORS 33.110² in the amount of \$5,037.50 to indemnify the defendants for their costs associated with the contempt proceeding. (E-21 - E-23.)

2

ORS 33.110 reads: "Judgment of indemnification and for costs. If any loss or injury to a party in an action, suit or proceeding, prejudicial to his rights therein, has been caused by the contempt, the court or judicial officer, in addition to the punishment imposed for the contempt, may give judgment that the party aggrieved recover from the defendant a sum of money sufficient to indemnify him, and the judgment, and the acceptance of the amount thereof, is a bar to any action, suit or proceeding by the aggrieved party for such loss or injury."

In their appeal of the latter order to the Oregon Court of Appeals, Petitioners urged reversal on the ground, inter alia, that the production order:

"placed them in the position of violating a basic precept of their religious dogma. *** Refusal to produce Ms. Marks' auditing files was an action protected by the First Amendment to the U. S. Constitution. ***The state may only regulate religiously based actions where a 'compelling state interest' has been demonstrated and where the regulation poses the least restrictive alternative to infringement of First Amendment rights." (E-23 - E-25.)

REASONS FOR GRANTING THE WRIT

The trial court decision reflects an attitude of studied indifference to the Free Exercise Clause, contrary to the thrust of opinions from both this Court and tribunals from other states. At the same time, this case is one of first impression, as no located decision deals with the application of

the Free Exercise Clause to a discovery demand made in non-governmental litigation. Given the rapid increase in tort actions involving religions in this country, and the consequent increasing demand for extensive discovery of religious records and files³, the time is ripe to determine how the balance is to be struck between a private litigant's discovery wishes and a Church's right not to be compelled to violate its religious beliefs.

3

See Appendix F for a listing of some of the tort litigation involving the Church of Scientology, the Unification Church, and the International Society for Krishna Consciousness filed in recent years. Even ancient religions, such as the Roman Catholic Church, are not free from tort litigation based upon Church practices. See Bostick v. Dittman, et al, Circuit Court of the Sixth Judicial Circuit for Pinellas County, Florida, No. 82-1365-11. (1982).

The record here clearly establishes that the release of Ms. Marks' auditing records is, in the view of the Church, forbidden by its religion. As in United States v. Lee, 455 US 252, 257 (1982), therefore, that proposition is not open to challenge because "courts are not arbiters of scriptural interpretation." Thus, the trial court order directing Petitioners to turn over the auditing files "interferes with their Free Exercise rights."

⁴

Id. As a consequence, "the delicate and difficult task falls upon the courts to weigh the circumstances and to appraise the substantiality of the reasons advanced in support of the regulation of the free enjoyment of the rights." Gibson v. Florida Legislative Comm., 372 US 539, 545 (1963), quoting from Schneider

⁴

Accord: Scott v. Rosenberg, 702 F2d 1263 (9th Cir. 1983).

v. State, 308 US 147, 161 (1939).

Although "[n]ot all burdens on religion are unconstitutional," United States v. Lee, supra, at 257; nonetheless,

"The essence of all that has been said and written on the subject is that only those interests of the highest order and those not otherwise served can overbalance legitimate claims to the free exercise of religion." Wisconsin v. Yoder, 406 US 205, 215 (1972).

Thus, to justify an interference with the Free Exercise Clause, there must be a "showing that it is essential to accomplish an overriding governmental interest." United States v. Lee, supra, at 257.

Further, it must be demonstrated that the interference in question "is the least restrictive means of achieving some compelling state interest." Thomas v. Review Board of Indiana Employment Security Division, 450 US

707, 718 (1981).

Here, the trial court found that the auditing files in question were beneficial to the defendants because they "may reasonably be expected to contain evidence which is material to [Marks'] claim and the damages, if any, suffered by [Marks]." (E-20.) Under ordinary circumstances that finding might justify production because the documents might lead to relevant evidence. Cf., FRCP 26(b)(1). That finding does not, however, rise to the dignity of a compelling state interest in the production of the files.

Initially, it must be remembered that no government unit was a party to this litigation. Ms. Marks sued the defendants to recover money damages. The interest of the defendants was to preserve their money. The state has only a "minimal concern with the

outcome" of "a civil case involving a monetary dispute between private parties." Addington v. Texas, 441 US 418, 423 (1979). Thus, there simply was no governmental interest to be advanced here other than its general interest in the orderly flow of the private litigation filed in its courts⁵. Such a general, nonspecific interest has never overridden the Free Exercise Clause. See Sherbert v. Vernon, 374 US 398 (1963) (General interest in preventing fraudulent unemployment claims); Wisconsin v. Yoder, supra (General interest in educated

5

And even if the state's own money was involved in this litigation, an interest to preserve state money is not compelling. Cf., Rinaldi v. Yeager, 384 US 305 (1966); Carrrington v. Rash, 380 US 89 (1963); Shapiro v. Thompson, 394 US 618 (1969); Sherbert v. Vernon, supra; Myers v. Juras, 327 F Supp 759, 762 (D Or 1971), aff'd 404 US 803, rev den 404 US 961 (1971).

citizens); Thomas v. Review Board of Indiana Employment Security Division, supra (General interest to avoid unemployment, avoid depletion of unemployment compensation funds, and entanglement into religious beliefs of individuals); McDaniel v. Paty, 435 US 618 (1978) (General interest of the state in not assisting religion and in avoiding political divisiveness); Heffron v. International Society for Krishna Consciousness, Inc., 452 US 640 (1981) (General interest in crowd control). Indeed, even the national interest in fostering patriotism in time of war is not sufficient to override the Free Exercise Clause. West Virginia State Board of Education v. Burnette, 319 US 624 (1943).

The "compelling interests" found to-date which have been sufficient to require the Free Exercise Clause to give way have been the

national interest in the integrity of the social security system, United States v. Lee, supra; the state's interest in preserving monogamy and preventing exploitation of women, Reynolds v. United States, 98 US 145 (1878); and protection of the health and safety of children, Prince v. Massachusetts, 321 US 158 (1944). A state's general interest in giving evidentiary assistance to a private litigant in a civil action over money simply is not compelling. Addington v. Texas, supra.

In addition, there was no showing here that the general, "minimal" interest of the state could not have been secured in this case by deposing Ms. Marks herself regarding the subject matter thought by the defendants to be important. Even an in camera inspection by the court to weed out nonrelevant material would have been less violative of the Church's

rights than the blanket order to turn over all auditing files, regardless of content. Thus, the order of production was invalid under the Free Exercise Clause.

Other courts have applied the constitutional analysis urged here by Petitioners to civil discovery requests.

Britt v. Superior Court of San Diego County, 20 Cal3d 844, 574 P2d 766 (Cal. 1978) started out as a consolidated action by 936 adjacent property owners for damages caused by airplane noise. The defendant, San Diego International Airport, on deposition sought to inquire of each plaintiff regarding the organizations to which he belonged, the correspondence received from such organizations, and the content of discussions regarding such organizations. The trial court ordered the plaintiffs to answer such questions, but Justice Tobriner, for the

California Supreme Court, ruled that plaintiffs' First Amendment rights of association barred such broad inquiry. The court reasoned:

"Instead of carefully delimiting the areas of private associational conduct as to which defendant has demonstrated a compelling need for disclosure, the challenged court order opens virtually all of the associations' most intimate information to wholesale disclosure, requiring, *inter alia*, the revelation of the names of all persons who have attended association meetings, the dates and subject matter of all such meetings, and details of the association's finances and contributions. As already noted, such revelations go far beyond the simple compelled disclosure of organizational affiliations which have routinely been struck down in prior decisions. (E.g., NAACP v. Alabama, supra; Bates v. Little Rock, supra; Shelton v. Tucker, supra; Gibson v. Florida Investigative Comm., supra; cf. White v. Davis, supra.)

The very breadth of the required disclosure establishes that the trial court in this case did not apply traditional First Amendment analysis in passing on the validity of defendant's inquiries into the

private associational realm, and in particular did not heed the constitutional mandate that 'precision of [disclosure] is required so that the exercise of our most precious freedoms will not be unduly curtained. ***' (Vogel v. County of Los Angeles, supra, 68 Cal 2d 18, 22, 64 Cal Rpts. 409, 411, 434 P2d 961, 963; See e.g., Pollard v. Roberts, supra, 283 F Supp 248, 257-259.) Under these circumstances, we conclude that the challenged discovery order is constitutionally infirm." 574 P2d at 777

Scott v. Rosenberg, supra, likewise applied the analysis here urged by Petitioners to a case where the plaintiff, a radio minister, sought damages against employees of the FCC who had subpoenaed records of his church relating to pledges made in response to plaintiff's request for donations made over the radio. Plaintiff argued that disclosure of the records violated his Free Exercise rights. The Ninth Circuit agreed, and then went on to determine whether the abridgment was justified

by a compelling governmental interest which could not be served by other means. The court concluded that under all the circumstances shown the FCC had a compelling interest "****in preventing the diversion of funds from the specifically identified projects for which they have been solicited." 702 F2d 1275. Further, the Ninth Circuit held that because "****there was no request for wholesale investigation of the church's financial records, but rather specific requests for records of an FCC licensee concerning Scott's salary and donations, both of which he allegedly misrepresented during broadcast solicitations,***" the subpoena in question was the least restrictive means of serving the FCC's purpose. 702 F2d at 1275-76.

These cases reflect the proper constitutional analysis to be applied here and

whenever a discovery request would compel a
church to violate its religious codes .⁶

Because the order of production was invalid, the subsequent assessment of costs against the Petitioners for their alleged contempt was likewise invalid.

6

Cf., Black Panther Party v. Smith, 661 F2d 1243 (DC Cir 1981), vacated sub. nom. on other grounds, 102 S. St. 3505 (1982) (First Amendment associational rights bar compelled disclosure of membership lists in private litigation).

CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be granted.

May, 1983

Respectfully submitted,

CHARLES J. MERTEN
Counsel for Petitioners
117 S. W. Taylor
Suite C
Portland, Oregon 97204
(503) 227-3157

Of Counsel:

TIMOTHY BOWLES
902 First Farwest Building
400 S. W. Sixth Avenue
Portland, Oregon 97204
(503) 227-4477

APPENDIX A

Judgment of The Court of Appeals
of the State of Oregon

IN THE COURT OF APPEALS OF
THE STATE OF OREGON

Jessica Marks,

Plaintiff,

v. No. A7803-03474
CA A20440

Peter S. Rudie, and Oregon attorney,
Chris Rudie, Ted Patrick, Ted Patrick
& Associates, Rick Heller, Reed Heller,
Alama Hall, Bill Hall, Julie Christofferson,
Patrick Osler, Mary Weeks, Lynn Weeks,
Clark Weeks, and Mary Weeks,

Defendants,

State of Oregon, ex rel Peter S. Rudie,
an Oregon attorney, Chris Rudie, Ted
Patrick, Ted Patrick & Associates,
Rick Heller, Reed Heller, Alma Hall,
Bill Hall, Julie Christofferson,
Patrick Osler, Mark Weeks, and Lynn Weeks,

Respondents,

Church of Scientology of Portland and
Church of Scientology, Mission of Davis,

Appellants.

* * * * *

Appeal from Circuit Court, Multnomah County.

William M. Dale, Judge.

Argued and submitted August 12, 1982.

Timothy Bowles, Portland, argued the cause and filed the brief for appellants.

Patric J. Doherty, Portland, argued the cause for respondents Rick Heller, Reed Heller, Alma Hall and Julie Christofferson. With him on the briefs were Ronald L. Wade and Rankin, McMurry, VavRosky & Doherty, Portland.

William T. Powers, Portland, argued the cause for respondents Ted Patrick and Ted Patrick & Associates. With him on the brief was Powers & Powers, Portland.

Jeffrey P. Foote, Portland, waived appearance for respondents Patrick Osler, Lynn Weeks and Mary Weeks.

Before Gillette, Presiding Judge, and Warden and Young, Judges.

Affirmed without opinion.

FILED: September 15, 1982

APPENDIX B

Order of the Court of Appeals Denying
Application For Reconsideration

[Letterhead of Court of Appeals,
Salem, Oregon]

November 26, 1982

Mr. Timothy Bowles
Attorney at Law
624 Pacific Building
520 SW Yamhill Street
Portland, Oregon 97204

RE: Mark v. Rudie - SER Rudie v. Church of
Scientology (CA A20440) (SC 29094)

Dear Mr. Bowles:

Pursuant to Rule of Procedure 10.10 the Court of Appeals has considered the Petition for Review filed in the above case and has on November 23, 1982 decided not to rehear the matter or change its decision. Therefore, the Supreme Court will proceed to determine whether to grant review. The appellate court decision is not enforceable until the Supreme Court has completed its review of the petition.

Sincerely,

CAROL JUSTIS
Carol Justis
Records Administrator

CJ:np
cc: Mr. Patric Doherty, Mr. William T. Powers
Mr. Jeffrey P. Foote, Mr. Peter S. Rudie

APPENDIX C

**Order of Oregon Supreme Court
Denying Petition For Review**

[Letterhead of Oregon Supreme Court,
Salem, Oregon]

January 26, 1982

Mr. Timothy Bowles
Attorney at Law
624 Pacific Building
520 SW Yamhill Street
Portland, Oregon 97204

RE: Mark v. Rudie
(CA A20440) (SC 29094)

Dear Mr. Bowles:

The Supreme Court on January 25, 1983 denied Appellants' Petition for Review in the above-entitled matter.

This letter constitutes the order of the Supreme Court denying the petition.

Very truly yours,

MARILYN HARTLEY
Marilyn Hartley
Supreme Court
Calendar Clerk

With Jones, J. not participating

MH/st

cc: Mr. Patric Doherty, Mr. William T. Powers
Mr. Jeffrey P. Foote, Mr. Peter S. Rudie

APPENDIX D

Order of Oregon Supreme Court
Denying Petition For Rehearing

[Letterhead of Oregon Supreme Court,
Salem, Oregon]

March 1, 1982

Mr. Timothy Bowles
Attorney at Law
624 Pacific Building
520 SW Yamhill Street
Portland, Oregon 97204

RE: Mark v. Rudie
(CA A20440) (SC 29094)

Dear Mr. Bowles:

The Supreme Court has denied Petitioner's Petition for Rehearing in the above-entitled matter.

This letter constitutes the order of the Supreme Court denying the petition.

Very truly yours,

MARILYN HARTLEY
Marilyn Hartley
Supreme Court
Calendar Clerk

MH/st

cc: Mr. Patric Doherty, Mr. William T. Powers
Mr. Jeffrey P. Foote, Mr. Peter S. Rudie

APPENDIX E

Relevant Pleadings, Orders, Memoranda, and Briefs, or Portions thereof, from the Circuit Court of the State of Oregon for Multnomah County and the Oregon Court of Appeals

The relevant complaint is the Fourth Amended Complaint of Ms. Marks dated December 17, 1979, which read:

IN THE CIRCUIT COURT OF THE STATE
OF OREGON
FOR THE COUNTY OF MULTNOMAH

JESSICA MARKS,)
)
Plaintiff,) No. A7803-03474
)
v.)
)
PETER S. RUDIE,) FOURTH AMENDED
et al,) COMPLAINT
) ACTION AT LAW
Defendants.)
_____)

Plaintiff alleges:

COUNT ONE

I.

On or about June 5, 1976, defendants deliberately and intentionally restrained the freedom

of movement of the plaintiff by confining her to a residence at 5230 SW Taylors Ferry Road, Portland, Oregon. The restraint was accomplished by force and threats of force.

II.

At all times mentioned herein, Rick Heller and Reed Heller were acting as agents and employees of defendant Ted Patrick, also known as Ted Patrick and Associates, and were acting within the scope of such agency and employment.

III.

As a direct and proximate result of the concerted action on the part of the defendants to restrain her liberty, plaintiff suffered, continues to suffer, and will in the future suffer great humiliation, fear, and anguish, all to her damage in the sum of \$250,000.00.

IV.

The defendants' acts constituted wanton misconduct, and plaintiff is entitled to \$250,000.00 punitive damages in order to deter the defendants and others similarly situated from such conduct in the future.

V.

When this cause of action accrued against Ted Patrick and Ted Patrick and Associates, defendant Patrick was out of the state, and service could not be made within the state for a period of not less than one year prior to personal service upon him.

VI.

After this cause of action accrued against Ted Patrick and Ted Patrick and Associates, Ted Patrick concealed his whereabouts for a period of not less than one year prior to personal service upon him.

VII.

After this cause of action accrued against Rick and Reed Heller, they departed from the resided out of this state, and further, they concealed their whereabouts, all for a period of not less than eighteen months prior to personal service upon them.

COUNT TWO

I.

Plaintiff realleges and incorporates by reference paragraphs I through VII of the First Count.

II.

Prior to and on June 5, 1976, defendants conspired together for the purpose of depriving, either directly or indirectly, the plaintiff of the equal protection of the laws, and of equal privileges and immunities under the laws of the United States, and specifically to deprive plaintiff of her right to freely exercise her religion as a member of the Church of Scientology, defendants being motivated by hostile and discriminatory feelings toward the Church of Scientology and its membership, and all conduct alleged herein was in furtherance of such conspiracy.

III.

Plaintiff has incurred reasonable attorney fees in her prosecution of this action in an amount to be determined.

WHEREFORE, plaintiff prays for judgment against defendants in the sum of \$250,000.00 compensatory damages, \$250,000.00 punitive damages and for her costs and disbursements, and reasonable attorney fees incurred herein.

The defendants responded to the Fourth Amended Complaint with an Answer on January 23, 1980 as follows, omitting the caption:

Defendants in answer to Plaintiff's Fourth Amended Complaint, deny and alleges as follows:

I.

Defendants deny each and every allegation of Plaintiff's Fourth Amended Complaint.

II.

Defendants have incurred reasonable attorneys' fees in defense of this action in an amount to be determined.

AS AN AFFIRMATIVE DEFENSE to Plaintiff's Fourth Amended Complaint, Defendants allege that each cause of action is barred by the applicable statute of limitations.

WHEREFORE, Defendants pray for a judgment against the Plaintiff for Defendants' costs, including reasonable attorneys' fees, incurred herein and further that Plaintiff's action be dismissed.

On October 31, 1979, defendants filed a REQUEST FOR PRODUCTION, requesting in part:

"Pursuant to ORS 41.616, [defendants] requests that you produce...(9) copies of any written documents concerning any auditing...or counseling received by

plaintiff from any 'Church of Scientology' related organization..."

On October 7, 1980 the trial court entered an ORDER requiring Ms. Marks to:

Produce all those documents in her possession***and deliver a signed authorization to [defense counsel] which requests and consents to the production of such documents from any person. ***

Jessica Marks executed a waiver which stated in part:

I***authorize any person to provide [defense counsel] with***⁽⁸⁾ copies of any written documents concerning any auditing*** or counseling received by me from any Church of Scientology organization.

On October 7, 1980 defendants served the Church with a SUBPOENA DUCES TECUM which, in relevant part, read as follows:

You are hereby required to appear[place and time]...and to bring with you those documents set forth in Exhibit "A"***Exhibit "A" of each subpoena specified in part: "***⁽⁸⁾ Copies of any written documents concerning any auditing,

training or counselling received by Jessica Marks from any Church of Scientology organization. (9) The above documents include any auditing files, pastoral counseling files, confessional formulary files***and any documents concerning***services provided to Jessica Marks by any Church of Scientology organization.

On October 16, 1980 the Church filed in the trial court a LIMITED MOTION TO QUASH SUBPOENA DUCES TECUM, which in relevant part read:

Pursuant to Oregon Rule of Civil Procedure 55(B), the Church of Scientology, Mission of Davis, having been served with a civil subpoena October 7, 1980, attached hereto as Exhibit A, respectfully moves this Court to quash said subpoena. This motion is limited to any and all documents, items, etc., which are not included in Exhibit B, attached hereto.

The following reasons are set forth in support of this motion: That discovery is overbroad and would cause hardship and undue burden; that discovery is irrelevant and immaterial to any claim or defense of the party seeking discovery; that discovery is not reasonably calculated to lead to evidence admissible at trial; that

discovery seeks to inquire into privileged matter; that discovery constitutes an invasion of privacy; that service of said subpoena is defective; and that subpoena and fees for appearance in the matter of Jeanne McKevitt were not properly tendered.

In support of the MOTION TO QUASH, the Church filed a MEMORANDUM which stated, in part:

***As to all requests, the first obvious deficiency of the subpoena is its vague, nonspecific nature. A subpoena duces tecum must specify with reasonable certainty the items sought.

The general rule is that where a party already has access to the information or document sought, he cannot require the opposing party or a nonparty witness to supply the information or document. In other words, a need for the document must be established. ***Hence, a subpoena requiring a reporter to reveal a confidential source will be quashed when there is no showing that the information sought is crucial to the development of the party's case and unobtainable by other means. Gilbert v. Allied Chemical Corp., 411 F Supp 505 (D C Va 1976). Likewise, a party cannot compel a

witness to produce under subpoena what the party can obtain from his opponent. Bada Co. v. Montgomery Ward & Co., 32 FRD 208 (D C Cal 1963).

Defendants ask for all documents concerning plaintiff's training, counseling, and auditing. The actual or potential relevancy of those documents is not apparent.

Defendants cannot subpoena privileged matter.

Defendants seek auditing and ethics files of the plaintiff. Those files contain summaries of structured (auditing) and ad hoc (ethics) confessional sessions between Church members and spiritual guides of the Church. They deal with the private and public "sins" and problems of the Church member. They describe acts and omissions not only of the Church member who is the subject of the file, but also of third party persons who have participated in the matters discussed. See the Linnerooth affidavit.

The deponents understand that the purported waiver of the plaintiff with respect to these files was compelled under threat of dismissal of her case. Therefore, it does not appear that the waiver was voluntary and ORS 44.040(c) would bar disclosure. In addition, it is deponents' position that the proper interpretation of ORS

44.040(c) is that both the priest and penitent hold the privilege. There is no Oregon case dealing with the refusal of the pastor, notwithstanding the consent of the parishioner, to disclose confidential communications. Such an interpretation, however, is consistent with both Rule 219 of the Model Code of Evidence and Rule 29 of the Uniform Rules of Evidence.

Related to, but not flowing from, the issue of priest-penitent privilege is the fact that non-parties stand in much different relationship to the discovery rules than parties. When a non-party moves to quash a subpoena duces tecum, the courts must balance the proven need, if any, of the party seeking inspection against the harm, embarrassment, or burden which would result from production of the documents. Re Zuckert, 28 FRD 29, aff'd 316 F2d 336, cert den 375 US 896. Here, nonspecific confidential confessional files are sought which could be embarrassing not only to the plaintiff but to third parties as well. Further, it is the clear policy and practice of the Church not to disclose such files outside of authorized Church officials. See, Cimijotti v. Paulsen, 219 F Supp 621 (N D Iowa 1963) (disclosure of confidences to priest which are passed onto authorized personnel within the Catholic Church does not destroy priest-penitent privilege). Defendants make no showing of need

for such files, nor or relevance.
Under all the circumstances, this
request should be denied.

The Church also supported its MOTION TO QUASH with the AFFIDAVITS OF REVEREND CHRISTOPHER R. LINNEROOTH AND JESSICA MARKS, which respectively read in relevant part:

IN THE CIRCUIT COURT OF THE STATE
OF OREGON
FOR THE COUNTY OF MULTNOMAH

JESSICA MARKS,)
)
Plaintiff,) No. A7803-03474
)
v.)
)
PETER S. RUDIE,) AFFIDAVIT OF
et al,) CHRISTOPHER R.
) LINNEROOTH
Defendants.)
)
STATE OF OREGON)
) ss.
COUNTY OF)
MULTNOMAH)

I, CHRISTOPHER R. LINNEROOTH,
being first duly sworn on oath
depose and say that:

I am an ordained minister of
the Church of Scientology. The
Church of Scientology is a

recognized bona fide religion, with Churches located throughout the world. The Church is officially classified by federal and state governments, for tax purposes, as a religious organization.

The subpoenas request auditing and ethics files on Jessica Marks. Auditing is a formalized process used in our religion whereby a Church member seeks and obtains spiritual guidance from a spiritual leader -- the auditor. Counseling sessions are held in a structured, organized way in auditing. The auditors keep notes of what is discussed in those session. Those are the auditing files.

When a Church member seeks spiritual counseling and guidance on an ad hoc basis, the notes of that discussion go into an ethics file. Also, the observations, if any, of spiritual leaders and other Church members concerning the morality of specific conduct by a Church member goes into the ethics file.

Both the auditing and ethics files typically contain notes of confessions and spiritual problems not only about the Church member in question, but also of third persons that the Church member discusses.

It is the policy and practice of the Church to receive such communications in confidence and to keep such communications confidential within the Church.

[Affidavit of Jessica Marks]

I, JESSICA MARKS, depose and say that:

I am a member in good standing of the Church of Scientology, a recognized bona fide religion throughout the world.

I initiated this law suit against the defendants because of an incident on June 5, 1976, when defendants falsely imprisoned me in a conspiracy to deprive me of my right to exercise my religion. As a result of that incident I suffered mental distress and the District Attorney's office suggested I file a civil suit.

In an attempt to alleviate the mental distress caused by this incident, I requested and received spiritual counseling from various ministers of the Church of Scientology known as auditors. The word auditor is used because it means 'a listener'. (See definition #3 in The World Book Dictionary 1980 Edition.) In all of the spiritual counseling (auditing) I have received, the auditor only asked questions and listened to me. I was never told what to think about the incident or any of the defendants in this case because any sort of such evaluation by the auditor is strictly forbidden by the 'Auditor's Code'. (Exhibit A.)

The auditing I have received, both before and after this incident has been a tremendous spiritual help

for me in becoming more able and alleviating some of the distress caused by the defendants. Throughout all of my auditing, I have confessed various sins to my minister which are recorded in my auditing folders. I also spoke in confidence to my minister about things which are very personal that deal with my parents, the death of my brother, my relationship with my former husband, and my friends. These are very personal and I do not wish that they be paraded before a court. In my Church, only ministers may view such files.

As with millions of other members of the Church of Scientology, I have made many gains through the auditing I have received and intensely object to any attempts by Mr. Wade or the defendants to question the validity or effectiveness of my religious practices. I also object to his derogatory references to my auditing as being 'pseudo-psychological' counseling. I doubt very much if they would allege that I was 'brain-washed' by a Catholic Confessional which is very similar to auditing in my Church. I am sure you wouldn't want a copy of your confessions to a priest made available for others to see.

It is clear to me that the defendants are trying to put my religion on trial by questioning all the religious doctrine and the practices contained in the Church's

books and my Confessional and Ethics folders. To allow this to happen at all is contrary to the First Amendment of our Constitution which protects religious freedom and prevents heresy (sic) trials. To argue the issues of false imprisonment and mental distress, it is irrelevant as to what my beliefs are.

The Church of Scientology is not and has never been a party in my suit. The Church's legal files are completely irrelevant to this case.

The only reason I signed a waiver for the Church to release my Confessional folders and other documents was because my attorney informed me that the Court ordered the waiver be signed or the case would be dismissed.

I sincerely request the Court to protect my Constitutional rights by keeping my religion out of this case. The Church has produced plenty of documents which show that I am a member of the Church of Scientology. It is actually irrelevant what my religion is (I am also of the Jewish faith) and to allow further inquiry as to whether or not my Church's religious practices have helped me is not a question to be decided or discussed in a court room. To do so will result in many un-Constitutional ramifications.

I am and always have been a member of the Church of Scientology of my own free will and I am signing this affidavit of my own free will.

On November 19, 1980 the trial court signed an ORDER, entered on November 20, 1980, which stated:

IN THE CIRCUIT COURT OF THE STATE
OF OREGON
FOR THE COUNTY OF MULTNOMAH

JESSICA MARKS,)	
)	
Plaintiff,)	No. A7803-
)	03474
v.)	
)	
PETER S. RUDIE, an)	ORDER
Oregon attorney;)	
CHRIS RUDIE; TED)	
PATRICK, TED PATRICK)	
& ASSOCIATES; RICK)	
HELLER; ALMA HALL;)	
BILL HALL; JULIE)	
CHRISTOFFERSON;)	
PATRICK OSLER; MARY)	
WEEKS; LYNN WEEKS;)	
CLARK WEEKS; and)	
MARY WEEKS,)	
)	
Defendants.)	
)	

This matter came on for hearing before the Honorable William M. Dale on October 24 and October 27, 1980, on the Church of Scientology, Mission of Davis', and the Church of Scientology of Portland's Limited Motions to Quash Subpoena Duces Tecum.

ORDERED that the Motions are granted, except with respect to any of the following documents which are in the possession, custody or control of the Church of Scientology of Portland and/or the Church of Scientology, Mission of Davis:

1. Copies of the auditing files of Jessica Marks, including Ms. Mark's auditing, pastoral counseling and confessional formulary files.

The Church filed a NOTICE OF APPEAL of that order on November 24, 1980 to the Oregon Court of Appeals which with caption omitted provided in relevant part:

1. Movants-Appellants hereby give Notice of Appeal from Parts 1, 5 and 6 of the judgment, order, and decree entered in this case in Multnomah County Court by Judge William M. Dale on November 20, 1980.

DESIGNATION OF RECORD

3. Movants-Appellants designate the following portions of proceedings and exhibits to be included in the record on appeal in addition to the trial court file:

a. Hearing of October 15, 1980 regarding the Motion For Protective Order Or In the Alterna-

tive Motion to Modify Subpoena.

b. Hearing of October 23, 1980 before Judge Charles Crookham regarding Movants-Appellants' Affidavit of Prejudice.

c. Hearings of October 24, 1980 and October 27, 1980 regarding Movants-Appellants' Affidavit For Protective Order.

d. Hearing of November 20, 1980 regarding the form of Order.

That appeal was eventually DISMISSED on motion of the respondents by ORDER of the Oregon Court of Appeals as follows:

[caption omitted]

The Court having considered respondents' motion to dismiss the above-entitled appeal, and the court being fully advised:

IT IS FURTHER ORDERED that said motion is allowed and said appeal is dismissed.

IT IS HEREBY ORDERED that respondents recover from appellants costs and disbursements in this court taxed at \$90.

IT IS FURTHER ORDERED that the cause is returned below. This mandate shall there be entered as final order in this matter.

ENTERED at Salem, Oregon:
March 19, 1981.

At a hearing on December 12, 1980 the trial court found the Church in Contempt of Court for failing to produce the auditing files of Jessica Marks:

IN THE CIRCUIT COURT OF THE STATE
OF OREGON
FOR THE COUNTY OF MULTNOMAH

STATE ex rel PETER S.)	
RUDIE, an Oregon)	
attorney; CHRIS)	
RUDIE; TED PATRICK;)	
TED PATRICK & ASSOCI-)	
ATES; RICK HELLER;)	
REED HELLER; ALMA)	
HALL; BILL HALL;)	
JULIE CHRISTOFFERSON;) No. A7803-	
PATRICK OSLER; MARY) 03474	
WEEKS; and LYNN)	
WEEKS,)	
)	
Petitioners,)	
)	
v.)	
)	
CHURCH OF SCIENTOLOGY) ORDER OF	
OF PORTLAND and) <u>CONTEMPT</u>	
CHURCH OF SCIENTO-)	
LOGY, MISSION OF)	
DAVIS,)	
)	
Respondents.)	
)	

This matter came on for hearing before the Honorable William M. Dale

on December 12, 1980, on the Court's Order to Show Cause why the Church of Scientology of Portland and Church of Scientology, Mission of Davis, should not be held in contempt for their failure to produce the auditing file of Plaintiff pursuant to this Court's Orders of November 28, 1980, nunc pro tunc November 20, 1980, and December 5, 1980.

The Court, having heard the testimony of witnesses, received and reviewed exhibits and heard arguments of counsel, finds as follows:

(1) That the documents contained in Plaintiffs auditing files are necessary for Petitioners to prepare and present a proper defense to Plaintiff's action and may reasonably be expected to contain evidence which is material to Plaintiff's claim and the damages, if any, suffered by Plaintiff.

(2) That Petitioners' rights have been prejudiced by the failure of the Church of Scientology of Portland and Church of Scientology, Mission of Davis, to produce Plaintiff's auditing files and by their interference in the production of such documents through their transportation of the files to California.

(3) The Church of Scientology of Portland and Church of Scientology, Mission of Davis, are

in willful disobedience of this Court's Orders of November 28, 1980, nunc pro tunc November 20, 1980, and December 5, 1980.

WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Church of Scientology of Portland and Church of Scientology, Mission of Davis, are in contempt of this Court.

IT IS FURTHER ORDERED that the Court will determine what punishments to impose on Respondents for their contempt of this Court subsequent to December 19, 1980.

DATED this 10th day of February, 1981, nunc pro tunc December 12, 1980.

/s/WILLIAM M. DALE
Circuit Court Judge

Ultimately, the trial court assessed a total of \$5,037.50 against the Church to indemnify the Respondents for their costs:

IN THE CIRCUIT COURT OF THE STATE
OF OREGON
FOR THE COUNTY OF MULTNOMAH

STATE ex rel PETER S.)
RUDIE, an Oregon)
attorney; CHRIS)
RUDIE; TED PATRICK;)
TED PATRICK & ASSOCI-)
ATES; RICK HELLER;)
REED HELLER: ALMA)

HALL; BILL HALL;)	
JULIE CHRISTOFFERSON;)	No. A7803-
PATRICK OSLER: MARY)	03474
WEEKS; and LYNN)	
WEEKS,)	
)
Petitioners,))
)
v.))
)
CHURCH OF SCIENTOLOGY))	CONSOLIDATED
OF PORTLAND and)	ORDER AND JUDGE-
CHURCH OF SCIENTO-)	MENT FOR
LOGY, MISSION OF)	INDEMNIFICATION
DAVIS,)	FOR COSTS AND
	<u>ATTORNEYS FEES</u>
Respondents.))
)

This matter came on for hearing before the Honorable William M. Dale on January 26, 1981, on the Motions for Judgments for Indemnification for Costs and Attorneys Fees of Petitioners Reed Heller, Alma Hall, Bill Hall, Julie Christofferson, Patrick Osler, Mary Weeks, Lynn Weeks, Ted Patrick and Chris Rudie.

The Court, having heard the testimony of witnesses, received and reviewed exhibits and heard arguments of counsel,

HEREBY ORDERS AND ADJUDGES that Petitioners have and recover against Respondents, and each of them, for their costs and attorneys' fees as follows:

(1) That Petitioners Rick Heller, Reed Heller, Alma Hall, Bill

Hall and Julie Christofferson have judgment against Respondents, and each of them, for attorneys' fees of \$2,205.00 and costs of \$112.50;

(2) That Petitioner Ted Patrick have judgment against Respondents, and each of them, for attorneys' fees in the amount of \$875.50;

(3) That Petitioner Chris Rudie have judgment against Respondents, and each of them, for attorneys' fees in the amount of \$1,240.00; and

(4) That Petitioners Patrick Osler, Mary Weeks and Lynn Weeks have judgment against Respondents, and each of them, for attorneys' fees in the amount of \$735.00; and that execution issue therefore.

DATED this 10th day of February, 1981.

/s/WILLIAM M. DALE
Circuit Court Judge

The Church preserved in the Oregon Court of Appeals the issues raised here by assigning the following error, and making the following argument:

ASSIGNMENT NOS. 4 AND 5

THE COURT ERRED IN ORDERING APPELLANT CHURCHES TO PRODUCE MATERIALS PROTECTED BY THE PRIEST-PENITENT PRIVILEGE IN FINDING APPELLANTS IN

CONTEMPT AND IN AWARDING APPELLEES COSTS AND ATTORNEY FEES FOR APPELLANTS' PERCEIVED REFUSAL TO SO PRODUCE.

ARGUMENT

It [the order] placed them in the position of violating a basic precept of their religious dogma:

'(T)he auditing...files typically contain notes of confessions and spiritual problems not only about the Church member in question, but also of third persons the Church member discusses. It is the policy and practice of the Church to receive such communications in confidence and keep such communications confidential within the Church...' Affidavit of Rev. Linnerooth, Ab. 6.

Refusal to produce Ms. Marks' auditing files was an action protected by the First Amendment to the U. S. Constitution...The State may only regulate religiously based actions where a 'compelling state interest' has been demonstrated and where the regulation poses the least restrictive alternative to infringement of First Amendment rights. Sherbert v. Verner, 374 US 398, 403, 407, 83 S.Ct. 1790, 10 L.Ed. 2d 795 (1963).

Where consent had not been freely given by the parishioner, Ms. Marks, the Court had no compelling interest to order production of confidential documents protected by the priest-penitent privilege. In re Williams, 269 NC 68, 152 SE2d 317, 325 (1967). Thus Appellants should not have been held in contempt.

In addition, even assuming arguendo that consent was freely given, the Court was not justified in holding Appellants in contempt as this was not the least restrictive alternative to infringement of their religious free exercise rights.

APPENDIX F

Similar Cases Raising Claims of Religious Fraud, Mind Control, And/Or Brainwashing

I. CASES AGAINST THE CHURCH OF SCIENTOLOGY

<i>Name of Case, Court & Docket Number</i>	<i>Nature of Allegations</i>	<i>Judicial Action</i>
1. PETERSON v. CHURCH OF SCIENTOLOGY OF CALIFORNIA, ET AL., U.S.D.C., Central District of California, Case No. CV 81-3259-CBM	Suit by former member alleging religious fraud and deceit, intentional infliction of emotional distress, exercise of mind control and brainwashing. No allegations of physical coercion.	Motion for summary judgment on First Amendment grounds is pending.
2. GARRITY v. CHURCH OF SCIENTOLOGY OF CALIFORNIA, ET AL., U.S.D.C., Central District of California, Case No. CV 81-3260-CBM	Suit by former member alleging religious fraud and deceit, intentional infliction of emotional distress, exercise of mind control and brainwashing. No allegations of physical coercion.	Motion for summary judgment on First Amendment grounds is pending.

*Name of Case, Court
& Docket Number*

Nature of Allegations

Judicial Action

3. JEFFERSON v. CHURCH OF SCIENTOLOGY OF CALIFORNIA, ET AL., U.S.D.C., Central District of California, Case No. CV 81-3261-CBM

Suit by former member alleging religious fraud and deceit, intentional infliction of emotional distress, exercise of mind control and brainwashing. No allegations of physical coercion.

Motion for summary judgment on First Amendment grounds is pending.

4. LOCKWOOD v. CHURCH OF SCIENTOLOGY OF CALIFORNIA, ET AL., U.S.D.C., Central District of California, Case No. CV 81-3109-CBM

Suit by former member alleging religious fraud and deceit, intentional infliction of emotional distress, exercise of mind control and brainwashing. No allegations of physical coercion.

Motion for summary judgment on First Amendment grounds is pending.

5. ROSENKJAR v. CHURCH OF SCIENTOLOGY OF CALIFORNIA, U.S.D.C., District of Columbia, Docket No. 81-1350 (JR)

Suit by former member alleging religious fraud and deceit, intentional infliction of emotional distress, exercise of mind control and brainwashing. No allegations of physical coercion.

Case settled for refund of contributions to Church.

6. WOLLERSHEIM v. CHURCH
OF SCIENTOLOGY OF
CALIFORNIA, ET AL., L.A.
Superior Court, Case No.
332-027

Suit by former member
alleging religious fraud and
deceit, intentional infliction
of emotional distress,
exercise of mind control
and brainwashing. No
allegations of physical
coercion.

Case pending, no motion
for summary judgment yet
filed.

7. PEGGY BEAR v. CHURCH
OF SCIENTOLOGY ET AL.,
U.S.D.C., S.D.N.Y.,
81-4688 (MJL)

Suit by former member
alleging religious fraud and
deceit, intentional infliction
of emotional distress,
exercise of mind control
and brainwashing. No
allegations of physical
coercion.

Motion to dismiss or in the
alternative for summary
judgment pending.

8. DONALD BEAR v. CHURCH
OF SCIENTOLOGY, ET AL.,
U.S.D.C., S.D.N.Y., 81-
6864 (MJL)

Suit by former member
alleging religious fraud and
deceit, intentional infliction
of emotional distress,
exercise of mind control
and brainwashing. No
allegations of physical
coercion.

Motion to dismiss or in the
alternative for summary
judgment pending.

*Name of Case, Court
& Docket Number*

Nature of Allegations

Judicial Action

9. VAN SCHAICK v. CHURCH
OF SCIENTOLOGY OF
CALIFORNIA, U.S.D.C.,
District of
Massachusetts, 79-2491-G

Class action by former member alleging religious fraud and deceit, intentional infliction of emotional distress, exercise of mind control and brainwashing. No allegations of physical coercion. Complaint further alleged commission of intentional torts against plaintiff. Complaint sought attachment of property of the defendants and appointment of a court receiver to administer the affairs of the Church.

District court denied applications for class action certification, attachment and receivership, and dismissed several counts of the complaint on non-First Amendment grounds. District court invited motion for summary judgment on First Amendment grounds. See 535 F. Supp. 1125 (1982). After defendant Church of Scientology filed motion for summary judgment on religious fraud and mind control allegations, and after said motion was argued, plaintiff's attorney withdrew such allegations. District court entered order dismissing such allegations with prejudice, never reaching ultimate First Amendment issues.

HJ
1
D

10. KECK v. CHURCH OF SCIENTOLOGY OF CALIFORNIA, U.S.D.C., Central District of California, CV 816060R
Suit by former member alleging religious fraud and deceit, intentional infliction of emotional distress, exercise of mind control and brainwashing. No allegations of physical coercion.
Case settled out of court.

11. BROWN v. CHURCH OF SCIENTOLOGY OF CALIFORNIA, ET AL., U.S.D.C., District of New Jersey, Docket No. 81-435, transferred to District of Oregon, Docket No. 81-718-RE.
Suit by former member alleging religious fraud and deceit, intentional infliction of emotional distress, exercise of mind control and brainwashing. No allegations of physical coercion.
Case transferred to U.S.D.C., District of Oregon on motion of improper venue. Case withdrawn and settled.

12. TROY v. CHURCH OF SCIENTOLOGY OF CALIFORNIA, Superior Court of Massachusetts, Suffolk County, Docket No. 41-073
Suit by former member alleging religious fraud and deceit, intentional infliction of emotional distress, exercise of mind control and brainwashing. No allegations of physical coercion.
Case was consolidated with other similar cases before single judge for determination of common First Amendment issues on a motion for summary judgment. Motion is pending.

<i>Name of Case, Court & Docket Number</i>	<i>Nature of Allegations</i>	<i>Judicial Action</i>
13. GARRITANO, ET AL. v. CHURCH OF SCIENTOLOGY OF BOSTON, Superior Court of Massachusetts, Suffolk County, Case No. 40906	Suit by former member alleging religious fraud and deceit, intentional infliction of emotional distress, exercise of mind control and brainwashing. No allegations of physical coercion.	Case was consolidated with other similar cases before single judge for determination of common First Amendment issues on a motion for summary judgment. Motion is pending.
14. HANSEN v. CHURCH OF SCIENTOLOGY OF BOSTON, Superior Court of Massachusetts, Suffolk County, Case No. 41073	Suit by former member alleging religious fraud and deceit, intentional infliction of emotional distress, exercise of mind control and brainwashing. No allegations of physical coercion.	Case was consolidated with other similar cases before single judge for determination of common First Amendment issues on a motion for summary judgment. Motion is pending.
15. VASHEL v. CHURCH OF SCIENTOLOGY OF BOSTON, Superior Court of Massachusetts, Suffolk County, Case No. 47237	Suit by former member alleging religious fraud and deceit, intentional infliction of emotional distress, exercise of mind control and brainwashing. No allegations of physical coercion.	Case was consolidated with other similar cases before single judge for determination of common First Amendment issues on a motion for summary judgment. Motion is pending.

L-3

16. **SMITH v. CHURCH OF SCIENTOLOGY OF BOSTON,** Superior Court of Massachusetts, Suffolk County, Case No. 47236
Suit by former member alleging religious fraud and deceit, intentional infliction of emotional distress, exercise of mind control and brainwashing. No allegations of physical coercion.

17. **BAPTISTA v. CHURCH OF SCIENTOLOGY OF BOSTON,** Superior Court of Massachusetts, Middlesex County, Case No. 81-1194
Suit by former member alleging religious fraud and deceit, intentional infliction of emotional distress, exercise of mind control and brainwashing. No allegations of physical coercion.

18. **BARRON v. CHURCH OF SCIENTOLOGY OF BOSTON,** Superior Court of Massachusetts, Suffolk County, Case No. 51110
Suit by former member alleging religious fraud and deceit, intentional infliction of emotional distress, exercise of mind control and brainwashing. No allegations of physical coercion.

Case was consolidated with other similar cases before single judge for determination of common First Amendment issues on a motion for summary judgment. Motion is pending.

Case was consolidated with other similar cases before single judge for determination of common First Amendment issues on a motion for summary judgment. Motion is pending.

Case was consolidated with other similar cases before single judge for determination of common First Amendment issues on a motion for summary judgment. Motion is pending.

*Name of Case, Court
& Docket Number*

19. STIFFLER v. CHURCH OF SCIENTOLOGY OF BOSTON, ET AL., Superior Court of Massachusetts, Suffolk County, Case No. 44706

Nature of Allegations

Action by a member of the public against a church member and proselytizer who allegedly injured the plaintiff in a scuffle following an unsuccessful proselytization attempt. Plaintiff alleges that the beliefs and practices of the defendant Church implicitly encouraged the proselytizer to engage in the tortious conduct. There are no allegations that the Church had any policy which directly encouraged proselytizers to engage in fights with members of the public.

Judicial Action

Case was consolidated with other similar cases before single judge for determination of common First Amendment issues on a motion for summary judgment. Motion is pending.

20. STERNICKI v. CHURCH OF SCIENTOLOGY OF MICHIGAN, Circuit Court for Wayne County, Michigan, Civil Action No. 78-836-974-NO.

Suit by former member alleging religious fraud, exercise of mind control, and brainwashing. Plaintiff alleges that as a result of his membership in the Church, he terminated psychotherapy, lost self control, and therefore shot another person in an argument. His alleged damages are his liability arising out of the shooting.

Case was dismissed on procedural grounds, but reinstated on appeal. Case presently is pending.

21. DOUCETTE v. CHURCH OF SCIENTOLOGY OF CALIFORNIA, Superior Court of California, Riverside County, No. 130348

Suit by former member alleging religious fraud and deceit, exercise of mind control and brainwashing. Complaint alleges that the Church is not a bona fide religion and that plaintiff was induced by indoctrination techniques to make donations to the Church.

Case was dismissed on August 6, 1980 for non-constitutional reasons.

*Name of Case, Court
& Docket Number*

Nature of Allegations

Judicial Action

22. GUZMAN v. CHURCH OF SCIENTOLOGY MISSION OF DAVIS, ET AL., Superior Court of California, Sacramento County, Case No. 271727

Suit by former member alleging religious fraud and deceit, exercise of mind control and brainwashing. No allegations of physical coercion.

Case was dismissed on non-constitutional grounds on December 11, 1978.

23. BURDEN v. CHURCH OF SCIENTOLOGY OF CALIFORNIA, ET AL., U.S.D.C., Middle District of Florida, Docket No. 80-501 Civ.

Suit by former member alleging religious fraud and deceit, exercise of mind control and brainwashing.

Motions to dismiss complaint on First Amendment grounds denied. Court suggested that First Amendment issues be raised on a motion for summary judgment. Such motion has not yet been filed.

24. KEITH ARMSTRONG v. CHURCH OF SCIENTOLOGY MISSION OF DENVER, District Court for the City of Denver, Colorado, C-66179

Suit by former member alleging religious fraud and deceit, exercise of mind control and brainwashing. No allegations of physical coercion.

Case was dismissed on non-constitutional grounds on February 5, 1982.

**25. GERALD ARMSTRONG v.
CHURCH OF SCIENTOLOGY
OF CALIFORNIA, ET AL.,
Superior Court of
California, L.A. County,
Case No. C 420153**

Suit by former member
alleging religious fraud and
deceit, exercise of mind
control and brainwashing.
No allegations of physical
coercion.

Court granted demurrer on
non-constitutional grounds
on October 27, 1982 but
granted leave to amend the
complaint.

II. CASES AGAINST THE UNIFICATION CHURCH

**1. SCHUPPIN v. UNIFICATION
CHURCH, U.S.D.C., D.
Vt.; Civil Action No. 76-87**

Suit by parents on their
own behalf and on behalf
of their daughter, alleging
mind control, fraudulent
inducement, peonage,
alienation of affections. No
allegations of physical
coercion.

Dismissed for lack of
standing, and for failure to
state a claim. Opinion did
not reach underlying Free
Exercise issues. 435 F.
Supp. 603 (1977).

**2. DOLE v. HOLY SPIRIT
ASSN. FOR UNIFICATION OF
WORLD CHRISTIANITY
(HSA/UWC), Superior
Court of California,
Alameda County, No.
544520-8**

Religious fraud and deceit,
intentional infliction of
emotional distress, exercise
of mind control and
brainwashing. No
allegations of physical
coercion.

Court has denied efforts to
take deposition of Reverend
Sun Myung Moon, spiritual
leader of the Church.
Motions to dismiss pending.

<i>Name of Case, Court & Docket Number</i>	<i>Nature of Allegations</i>	<i>Judicial Action</i>
3. MOLKO & LEAL v. HSA/UWC, ET AL., Superior Court of California, County of San Francisco, No. 769529	Religious fraud and deceit, intentional infliction of emotional distress, exercise of mind control and brainwashing.	Court has denied efforts to take deposition of Reverend Sun Myung Moon, spiritual leader of the Church. Motions to dismiss pending.
4. DOMINIQUE v. HSA, ET AL., Superior Court of Massachusetts, No. 81-3724	Negligence action against the Unification Church and a member for the member's negligent operation of a motor vehicle, causing death. Complaint alleges liability against the Church because it indoctrinated the member and exercised dominion and control over his mind, which proximately caused the accident.	Pending

5. HAYES v. UNIFICATION
CHURCH, ET AL., Court of
County Pleas, Franklin
County, Ohio, 79 Civ.
02-829

Suit against Church and religious proselytizer for intentional tort growing out of a fist fight between proselytizer and member of public. Plaintiff alleged that Church indoctrinated member and exercised dominion and control over his mind, causing him to resort to violence when solicitations were denied. No allegations that Church directly authorized or directed such attacks, or of physical coercion over members.

Church motion to dismiss or for summary judgment on First Amendment and respondeat superior grounds denied. Case scheduled for trial in 1983.

<i>Name of Case, Court & Docket Number</i>	<i>Nature of Allegations</i>	<i>Judicial Action</i>
6. MERONI v. HSA/UWC, Supreme Court of New York; County of Westchester, Index No. 3811/80	Case brought by father of suicide victim for wrongful death and personal injury. Deceased committed suicide approximately forty days after attending a three-day seminar with Unification Church. No other Church involvement. Complaint alleges mind control, brainwashing. No allegations of physical coercion.	Pending
7. MILLMAN v. HSA, ET AL., Supreme Court of California, Alameda County, Case No. 506009-3	Claim of alienation of affections by father whose son joined church and still remains a member. Allegations of religious fraud, brainwashing, mind control.	Motion to dismiss denied. Case was scheduled to go to trial, but is postponed pending appellate review of procedural matters.

8. EDEN v. HSA, ET AL.,
Circuit Court for Wayne
County, Michigan, No.
77-76736880-NO, 1977

Suit by former member for
religious fraud, mind
control, brainwashing. No
allegation of physical
coercion.

9. LEWIS v. HSA, ET AL.,
U.S.D.C., District of
Massachusetts, Civil Action
No. 82-310-S, 1982

Suit by former member for
fraud, mind control, and
breach of contract for not
fulfilling promises of
Church to "provide" for
the plaintiff's spiritual
well-being. Plaintiff
suffered mental illness after
leaving church, and alleges
that as an element of
damages. No allegations of
physical coercion or
mistreatment.

Deposition of Reverend
Moon had been approved
by Court. On December 3,
1982, Court dismissed the
action on First Amendment
and other grounds.

Motions to dismiss pending.

51-3

*Name of Case, Court
& Docket Number*

Nature of Allegations

Judicial Action

III. CASES AGAINST THE INTERNATIONAL SOCIETY FOR KRISHNA CONSCIOUSNESS

1. EISENBERG v.
INTERNATIONAL SOCIETY
FOR KRISHNA
CONSCIOUSNESS, Court of
Common Pleas,
Philadelphia County, PA.;
Civil Action No. 6173,
August Term 1981

Action against 26 Krishna Consciousness Temples for conspiracy to commit religious fraud and deceit, false imprisonment and outrageous conduct. Plaintiffs allege misrepresentations to plaintiffs as to the consequences of becoming a devotee of what plaintiffs allege to be "pseudo religious organization[s]", and use of indoctrination, mind control and brainwashing techniques. No allegations of physical coercion.

Cases pending. Demurrers have been filed, but no judicial action.

2. COY, ET AL. v.
INTERNATIONAL SOCIETY
FOR KRISHNA
CONSCIOUSNESS, Court of
Common Pleas,
Philadelphia County, PA.;
Civil Action No. 5063, June
Term 1982

Action against 26 Krishna Consciousness Temples for conspiracy to commit religious fraud and deceit, false imprisonment and outrageous conduct. Plaintiffs allege misrepresentations to plaintiffs as to the consequences of becoming a devotee of what plaintiffs allege to be "pseudo religious organization[s]", and use of indoctrination, mind control and brainwashing techniques. No allegations of physical coercion.

Cases pending. Demurrsers have been filed, but no judicial action.

*Name of Case, Court
& Docket Number*

Nature of Allegations

Judicial Action

3. CAMERON, ET AL. v.
INTERNATIONAL SOCIETY
FOR KRISHNA
CONSCIOUSNESS, Court of
Common Pleas,
Philadelphia County, PA.;
Civil Action No. 3931,
August Term 1982

Action against 26 Krishna Consciousness Temples for conspiracy to commit religious fraud and deceit, false imprisonment and outrageous conduct. Plaintiffs allege misrepresentations to plaintiffs as to the consequences of becoming a devotee of what plaintiffs allege to be "pseudo religious organization[s]", and use of indoctrination, mind control and brainwashing techniques. No allegations of physical coercion.

Cases pending. Demurrers have been filed, but no judicial action.

IV. CASES AGAINST THE SYMANON CHURCH

1. KOHL v. SYMANON
CHURCH, Superior Court of
California, County of Los
Angeles, Case No. WEC
55516

Fraud, brainwashing and
mind control in inducing
plaintiff to become a
member and in exercising
"dominion" over him.

Action is dismissed.

2. COHEN v. SYMANON
FOUNDATION, INC.,
Superior Court of
California, County of Los
Angeles, Case No. WEC
62637

Action for intentional
infliction of emotional
distress, breach of contract,
wrongful eviction. Plaintiffs
allege that defendants
engaged in brainwashing
and coercive persuasion,
fraudulently induced
plaintiffs to join, and
improperly forced plaintiffs
to leave the organization.

Action still pending.

<i>Name of Case, Court & Docket Number</i>	<i>Nature of Allegations</i>	<i>Judicial Action</i>
3. TOLCHIN v. SYNANON FOUNDATION, Superior Court of California, Los Angeles County, No. C 178,669	Action for intentional infliction of emotional distress, breach of contract, wrongful expulsion. Plaintiffs, former residents of Synanon, allege brainwashing, and coercive persuasion, and that they were improperly forced to leave in violation of promises made.	On June 28, 1982, the Court dismissed the action on First Amendment grounds. The Court recognized Synanon as a religion, held that the dispute was non-justiciable in that it was between a religious organization and a former member on matters concerning religious belief, practice and policy.

V. MISCELLANEOUS CASES AGAINST OTHER CHURCHES

1. KATZ v. DIVINE LIGHT MISSION, Circuit Court for the Thirteenth Judicial Circuit, Hillsborough County, Florida, Case No. 79-14105	Action by former member and her parents alleging religious fraud, mind control, brainwashing, and intentional infliction of emotional distress deriving from non-coercive religious practices, such as "excessive meditation." No allegations of physical coercion.	Motion to dismiss on First Amendment grounds denied. Trial is scheduled for January 1983.
---	---	---

2. BOSTICK v. DITTMAN, ET AL., Circuit Court of the Sixth Judicial Circuit for Pinellas County, Florida, Case No. 82-1365-11

Action by church member against Priest, Bishop, and the Apostolic Delegate of the Vatican, for theological malpractice, coercive persuasion, fraud and deceit. Plaintiff alleged priest had fraudulently induced and coerced her, by indoctrination, into an illicit sexual relationship. Compensatory and punitive damages were sought against the Bishop and Apostolic Delegate on the basis of respondeat superior, for negligence in permitting the priest to hold his position, and for failure to properly discipline the priest.

Action dismissed on non-constitutional grounds on June 22, 1982.

<i>Name of Case, Court & Docket Number</i>	<i>Nature of Allegations</i>	<i>Judicial Action</i>
3. NALLY & NALLY v. GRACE COMMUNITY CHURCH, Superior Court of California, Burbank County, No. NCC-18668-B	Action by parents of former member of church who committed suicide. Plaintiffs allege that the church leader persuaded the deceased to forego psychiatric care in favor of spiritual counselling, failed to provide sufficient counselling and care, and improperly persuaded him to leave the Catholic faith and become a member of the faith of the defendant Church.	Action was dismissed by Court, without opinion, on October 27, 1981.

CERTIFICATE OF SERVICE

I hereby certify that I am a member of the bar of the United States Supreme Court and I served the foregoing PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF OREGON on:

Jeffrey P. Foote
1200 S.W. Main Street
Portland, Oregon 97205
Attorney for Respondents Mary Weeks, Lynn
Weeks and Patrick Osler

Peter S. Rudie
530 Center Street, N.E. Suite 219
Salem, Oregon 97301
Attorney for Respondents Peter S. Rudie
and Chris Rudie

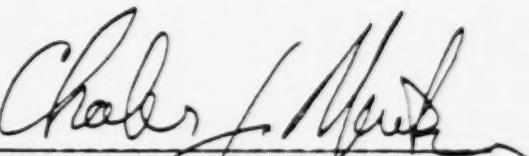
William T. Powers
1300 S.W. Fifth Avenue, Suite 3008
Portland, Oregon 97201
Attorney for Respondents Ted Patrick
and Ted Patrick & Associates

Patric Doherty
1600 Benjamin Franklin Building
One S.W. Columbia Street
Portland, Oregon 97258
Attorney for Respondents Rick Heller,
Reed Heller, Alma Hall, Bill Hall and
Julie Christofferson

by mailing to said attorneys three true and correct copies thereof, contained in a sealed envelope, with postage paid, addressed to said attorney at his regular office address, and deposited in the post office at Portland,

Oregon on said day. Between the post office and the address to which said copy was mailed, there is a regular communication by U. S. Mail.

DATE: May 20, 1983


CHARLES J. MERTEN
of Attorneys for
Petitioners